

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 12

February 24, 1997, 5:29 pm
Page S-1459 Temp. Record

BALANCED BUDGET AMENDMENT/No Reliance on Estimates

SUBJECT: **Balanced Budget Constitutional Amendment . . . S.J. Res. 1. Hatch motion to table the Byrd modified amendment No. 6.**

ACTION: MOTION TO TABLE AGREED TO, 61-34

SYNOPSIS: As reported, S. J. Res. 1, the Balanced Budget Constitutional Amendment: will require a three-fifths majority vote of both Houses of Congress to deficit spend or to increase the public debt limit; will require the President's annual proposed budget submission to be in balance; and will require a majority of the whole number of each House to approve any bill to increase revenue. Congress will be allowed to waive these requirements for any fiscal year in which a declaration of war is in effect. Congress will enforce and implement this amendment by appropriate legislation. The amendment will take effect in fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later. The States will have 7 years to ratify the amendment. For related debate, see 103rd Congress, second session, vote Nos. 47-48, 104th Congress, first session, vote Nos. 62-63 and 65-98, and 104th Congress, second session, vote No. 158.

The Byrd modified amendment would amend section 6 to read, "The Congress shall implement this article by law." As reported, section 6 states that, "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts."

Debate was limited by unanimous consent. Following debate, Senator Hatch moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

Neither of the two arguments that have been made in support of the Byrd amendment are valid. The first argument is that allowing Congress to enforce and implement this constitutional amendment using estimates of outlays and receipts will result in Congress running deficits while claiming that the budget is still balanced. Our colleagues think that estimates are faulty now, they insist we

(See other side)

YEAS (61)			NAYS (34)		NOT VOTING (5)	
Republicans (51 or 100%)	Democrats (10 or 23%)		Republicans (0 or 0%)	Democrats (34 or 77%)	Republicans (4)	Democrats (1)
Abraham	Hutchinson	Baucus		Akaka	Bennett- ²	Inouye- ²
Allard	Hutchison	Biden		Bingaman	Faircloth- ²	
Ashcroft	Jeffords	Bryan		Boxer	Inhofe- ²	
Bond	Kempthorne	Feinstein		Breaux	Specter- ²	
Brownback	Kyl	Graham		Bumpers		
Burns	Lott	Harkin		Byrd		
Campbell	Lugar	Moseley-Braun		Cleland		
Chafee	Mack	Reid		Conrad		
Coats	McCain	Robb		Daschle		
Cochran	McConnell	Wyden		Dodd		
Collins	Murkowski			Dorgan		
Coverdell	Nickles			Durbin		
Craig	Roberts			Feingold		
D'Amato	Roth			Ford		
DeWine	Santorum			Glenn		
Domenici	Sessions			Hollings		
Enzi	Shelby			Johnson		
Frist	Smith, Bob					
Gorton	Smith, Gordon					
Gramm	Snowe					
Grams	Stevens					
Grassley	Thomas					
Gregg	Thompson					
Hagel	Thurmond					
Hatch	Warner					
Helms						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

will never be able to prevent the use of faulty estimates in the future, and they conclude that we should defeat this constitutional amendment and keep our current faulty, deficit spending system. In this argument they seem to have resigned themselves to presiding over the eventual bankruptcy and dissolution of our Nation. With some relief we note that they do not typically make this argument; at all other points in this debate they have insisted that balancing the budget is just a matter of making the hard choices. Our colleagues have not been defeatists; they have said courage, not a constitutional amendment, is needed to make Members cut spending and raise taxes enough to stop deficit spending. Of course, if Members were to make those hard choices, they would be making them based on estimates. Budgets for a fiscal year are first put together 8 months before the year starts. Growth projections, unemployment projections, and similar projections have to be made in guessing how much revenue will come in and in guessing how much will be spent. Our colleagues have never said that Members could not possibly make the hard choices necessary to balance the budget because those choices would be made on estimates; no, the only time we have heard that this would be a problem is if they were making those hard choices under a constitutional requirement. We do not see the logic in saying that estimates can be used to make the hard choices necessary to balance the budget without a constitutional requirement to achieve balance, but they cannot be made with a constitutional requirement.

Estimates, especially 20 months in advance, are of course going to have margins of error. As time frames shorten they become much more accurate. For instance, it is much easier to forecast tomorrow's interest rates than next year's rates. When our colleagues have talked about the error rates that have occurred over the last 17 years in predicting revenues and outlays, they have been referencing the original, 20-months-in-advance estimates. As each month passes new, more accurate estimates are made and Congress is free to make adjustments based on those new estimates. Over the past 6 decades Congress has done so, but unfortunately its adjustments usually have been to spend more money when it has found that it has underestimated revenues; when it has found that it is spending more than expected, it has not reacted by raising more funds or cutting spending. Our colleagues have also failed to note that the reason many original estimates have proven wrong is that Congress has not stuck to its original spending plans; it has always been able to find excuses for increasing spending on its favorite special interest groups.

For the past 66 years Congress has not been required to balance the budget and in 58 of those years it has run deficits, including in each of the last 28 years. Until President Clinton was elected Congress and the President have always at least set the goal of balancing the budget. President Clinton and a Democratic Congress in 1993 and 1994 passed budgets that projected never-ending deficits; it took most of the 104th Congress for Republicans just to get Democrats to go back to the principle that proposed budgets should at least set forth plans to bring the budget into balance. Of course, such plans can be loaded with gimmicks, including by claiming eventual balance based on unreasonable estimates.

Our colleagues assume that because artful budgetary games have been played with estimates when there has been no requirement of any sort to balance the budget, those same games will be played with estimates when there is a constitutional requirement. Our colleagues assumption that Members would violate their oath to uphold the Constitution by playing games with estimates could be seen as showing a low regard for the integrity of Members of Congress. Of course, we know our colleagues do not have that opinion, nor do we; Members' fealty to the Constitution alone will bar gamesmanship. Arguably, one can claim that Members who balk at making the hard choices may reach wishful, self-deceiving conclusions that unrealistic estimates are in fact realistic, and that the result will be continued deficit spending. This argument would have some merit if there were no consequences that would come from making unduly optimistic estimates and then failing to make corrections throughout a year as it became more apparent that those estimates were false. However, there is a very strong consequence from failure: the debt increases, and the debt limit under this constitutional amendment can only be increased by law on a measure that passes with three-fifths majority votes of each House of Congress. This consequence will quell wishful thinking. Members will make conservative estimates rather than risk running a deficit. We think such strategies as planning for a 2-percent surplus will be followed. States that have balanced budget requirements, and other countries that have balanced budget requirements, follow such strategies successfully. We see no reason why Congress cannot be just as responsible.

The other argument that has been made in favor of the Byrd amendment is that it would require Congress to implement and enforce the balanced budget requirement "by law" instead of by "appropriate legislation." Though our colleagues suspect some sort of sinister intent in using the words "appropriate legislation," we assure them that they are mistaken. Those words have been included for the sake of consistency. Ever since the Civil War, the enforcement language of constitutional amendments (the 13th, 14th, 15th, 19th, 24th, and 26th amendments) have used the language "appropriate legislation." The courts have never taken the position that this language means that Congress can pass legislation without presidential involvement that will have binding effect outside of Congress, nor do they have any logical basis for doing so. The constitutional presentment requirement was not changed by these earlier constitutional amendments, and it likewise will not be changed by this amendment.

A number of years ago the current senior Senator from Maine remarked that if the Balanced Budget Constitutional Amendment were a gimmick Congress would have passed it long ago. She was right. Opposition to this amendment is strong in Congress because Members know that it will force them to make unpopular budget choices. The effect of this constitutional amendment will be the same with or without the Byrd amendment; the Byrd amendment would only change the process by making it more rigid. No budgetary advantage would accrue from that rigidity. Further, on practical political terms, if the Byrd amendment were adopted, we believe

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some Senators who support the amendment as it is now drafted would switch their votes because they could not accept that rigidity. We do not suggest that the Byrd amendment was proposed as a political ploy to defeat the Balanced Budget Constitutional Amendment, but we do suggest that its acceptance could have that result. We therefore strongly urge our colleagues to join us in voting to table the Byrd amendment.

Those opposing the motion to table contended:

The Byrd amendment would make two changes to the enforcement clause, section 6. First, it would strike the clause that would allow the Congress to "rely on estimates of outlays and receipts." Second, it would require Congress to enforce and implement this article "by law" instead of by appropriate legislation. These changes would make the balanced budget amendment truly enforceable. We resolutely oppose passing a balanced budget amendment, but if it is going to pass we think it would be better to pass a real requirement to balance the budget rather than just a cleverly disguised gimmick.

Each fiscal year the budget is put together based on estimates. A budget could not possibly be made without estimates; no one can precisely foretell the future. Educated guesses are made on such interrelated matters as how much will be collected in corporate and individual income taxes, how high the rate of inflation will be, and how high the unemployment rate will be. When errors are made either surpluses or deficits result. Congress primarily relies on estimates from the Congressional Budget Office (CBO). The CBO's most recent publication, "The Economic and Budget Outlook: Fiscal Years 1998-2007," notes that considerable uncertainty surrounds its estimates. For instance, it notes that if it failed to predict a swing in the business cycle its estimates could prove to be off by as much as \$100 billion. While we highly respect the work of the CBO, and consider it to have the best budget analysts in the country, it is not being modest when it gives warnings about the inaccuracy of its predictions. In the past 17 years its estimates for both outlays and revenues have been wrong. For revenues, it has missed the mark, on average, by \$29 billion, and for outlays it has been off an average of \$36 billion each year. In many years its estimates have been off by several times those average amounts. Those are pretty big goofs by any standard.

Section 1 of this proposed constitutional amendment states that every year outlays will not exceed revenues unless a three-fifths majority of both Houses approve a measure allowing deficit spending, and that measure becomes law. That section sounds very ironclad, and, given that mistakes are always made in making budget estimates, Congress will have difficulty in enforcing it. Final figures on a year's revenues and outlays are not even available from the Treasury Department until 4 weeks after that year is over; in other words, Congress may not know that it has run a deficit in a year, and thus has violated the Constitution, until that year has already ended.

However, if Congress ever mistakenly runs a deficit, we doubt that it will admit its error, because section 6 of the proposed constitutional amendment gives it an escape hatch. Section 6 says that "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." This clause will give Members the right to claim that they have implemented the amendment simply because their estimates balanced. Actual results will not matter--all that they will have to do is say that they thought their budget was going to balance when they prepared it. The committee report accompanying S.J. Res. 1 says that the reliance on estimates will give Congress "flexibility in fashioning necessary implementing legislation." It then goes on to make suggestions as to what may fall under the rubric of "flexibility": "Congress could use estimates of receipts or outlays at the beginning of the fiscal year to determine whether the balanced budget requirement of section 1 would be satisfied, so long as the estimates were reasonable and made in good faith"; Congress could decide that a deficit caused by a temporary, self-correcting drop in receipts or increase in outlays during the fiscal year would not violate the article"; "Congress could state that very small or negligible deviations from a balanced budget would not represent a violation of section 1"; "if an excess of outlays over receipts were to occur, Congress can require that any shortfall must be made up during the following fiscal year." Both opponents and proponents of a balanced budget amendment should be disturbed by these report interpretations of what will be permissible. Who is to say what is a "reasonable" estimate? Who decides if a drop in receipts will be "self-correcting"? Who will determine if a deficit is "negligible" and thus not to be counted as a deficit? Who will decide if it is permissible to run a deficit in one year on the promise that the next year the difference will be recouped?

The answer is Congress. The other strictures in this constitutional amendment, such as the three-fifths vote requirement to raise the debt limit, must be passed "by law," which means that both Houses must agree on the same language and that language must be presented to the President for his signature. Section 6, though, says that Congress will enforce the amendment by "appropriate legislation." Concurrent resolutions and other such vehicles are legislation, but they are never presented to the President and therefore are not subject to being vetoed. Section 6 thus sets an easy threshold for passing "legislation" that will allow Congress to pretend that the budget is in balance even though it is still running large deficits. We think that the public's distrust of Congress is a greater threat to our Nation than is the deficit. If Congress is allowed to run deficits while pretending that it is meeting a constitutional requirement to balance the budget the public's distrust will grow even greater.

We have therefore proposed the Byrd amendment. This amendment would strike the permission to rely on estimates when balancing the budget, and it would require Congress to "implement this article by law." No gimmicks, no excuses--every year the budget would have to balance. Both proponents and opponents of a balanced budget constitutional amendment should support this

amendment. We urge our colleagues to defeat the motion to table.